

TRAINING MODULE 16

STUDY PLAN

Survivors' and Dependents' Education Assistance

Objective:

To learn how to assist an eligible dependent or survivor to apply for VA education assistance.

References:

Title 38, U.S. Code, Chapter 35.

38 Code of Federal Regulations, Part 21, Subparts C and D, §§ 21.3020–21.4280.

Education Procedures Manual M22-4, Part 7

VA Pamphlets: 22-73-3, *Summary of Educational Benefits Under the Dependents' Educational Assistance Program, Chapter 35 of Title 38, U. S. Code;*

80-06-01, *Federal Benefits for Veterans and Dependents.*

Instructions:

Study the assigned reference materials to learn the criteria for benefits under this program and how to assist a veteran's dependent or survivor submit a claim for education assistance.

Summary:

VA WILL PROVIDE AN EDUCATION ASSISTANCE ALLOWANCE TO THE SPOUSE, SURVIVING spouse, or child of a veteran:

- Who is rated permanently and totally disabled from service-connected disability;
- Who died in service or as the result of a service-connected disability;
- Who died from any cause not the result of willful misconduct, and who at the time of death was rated as being permanently totally disabled from service-connected causes;
- Who is an active duty service member listed as being missing in action or a prisoner of war for more than 90 days, or who is forcibly detained or interned in line of duty by a foreign government or power for more than 90 days; or
- Who is an active duty service member who has a qualifying permanent total disability, incurred or aggravated in line of duty, for which he or she is hospitalized or undergoing out-patient treatment, and for which he or she will be discharged from service.

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See the sample application on pages 16-5 and 16-6. Generally, an eligible person will be entitled to 45 months of assistance under this program. If there is eligibility under more than one education assistance program, the maximum combined entitlement is 48 months. Entitlement is charged at the rate of one day of entitlement for one day of class or training, if attending school or training at a full-time rate. Entitlement charges are pro-rated if the eligible person attends school at less than full-time, and under certain circumstances there may be no charge to entitlement.

Although students under this program most commonly pursue institutional courses such as collegiate studies, business or vocational schools, etc., benefits may also be paid for apprenticeships, on-job training programs, or farm cooperative courses, as well as for secondary school courses leading to a high school diploma or for remedial courses to qualify for college admission. Assistance may be authorized for overseas study, but only if the courses lead to a college degree. Spouses and surviving spouses, but not eligible children, may take correspondence courses.

Payments are made monthly, and are based on the rate of attendance or training (full-time, three-quarter time, etc.). Since basic eligibility under Chapter 35 is predicated upon recognition as a veteran's dependent, there are no additional amounts payable for the student's dependents.

Marriage of the veteran's child does not affect eligibility for education assistance under this program. On the other hand, if the veteran and spouse are divorced the spouse's eligibility for education assistance ceases. If the spouse is attending school when this occurs, benefits will continue to the end of that school term (quarter, semester). Beginning January 1, 2004, the remarriage of a surviving spouse who is over age 57 at the time of remarriage will not remove eligibility for Chapter 35 benefits; however, if the spouse is younger than age 57 at the time of remarriage, eligibility will terminate. Termination of the remarriage by death or divorce will restore eligibility.

An eligible person may not receive education assistance under Chapter 35 while serving in the Armed Forces, and must be discharged under honorable conditions to resume benefits upon separation from service. If the eligible person has eligibility under more than one education assistance program, he or she must elect which program he or she will receive benefits under for any given training program or enrollment period.

There are significant differences in the length of eligibility for children and for spouses or surviving spouses: Generally, a child is eligible for education assistance from age 18 or completion of high school, whichever is earlier, to age 26. If eligibility arises after age 18 but before age 26, the child will be eligible for education assistance for a period of eight years (ten years if pursuing an apprenticeship or a program of on-job training), but not beyond age 31.

If a child interrupts training to serve in the Armed Forces, or for other reasons beyond the child's control, the period of eligibility may be extended by an amount equal to the length of the interruption, but not beyond age 31. Regardless of the basis, eligibility may not first arise after the child's 26th birthday. After the child's 18th birthday, education assistance under Chapter 35 may **NOT** be paid concurrently with compensation, pension, or DIC based on school attendance.

A veteran's spouse is eligible for education assistance for 10 years from the date permanent total disability arose or 10 years from the date of notice of permanent total disability, whichever is to the spouse's advantage. If the veteran dies while on active duty, the period of eligibility for

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the surviving spouse is 20 years from the date of the veteran's death in service. If a veteran dies from service-connected causes after service, the surviving spouse is eligible for 10 years from the date of the veteran's death or 10 years from the date of notice that the veteran's death was service-connected, whichever is to the surviving spouse's advantage.

If eligibility arises based on the veteran being rated permanently totally disabled at the time of death from nonservice-connected causes, the period of eligibility is 10 years from the date of the veteran's death. If the veteran was rated totally disabled at the time of death from nonservice-connected causes, but permanency of the total disability had not yet been established, permanent total disability at time of death will be conceded and basic eligibility for Chapter 35 benefits established. (This does not apply if the total disability is a temporary rating under 38 CFR §§ 4.28, 4.29, or 4.30.) A surviving spouse who had eligibility as the spouse of a permanently totally disabled veteran before the veteran's death will be entitled to a *new* 10-year period of eligibility from the date of the veteran's death, regardless of any eligibility prior to the veteran's death.

If eligibility is based upon an active duty service member being missing in action, a prisoner of war, or being forcibly held by a foreign government or power, the period of eligibility runs for 10 years after the 90th day of being listed in such status.

If the spouse or surviving spouse is unable to complete a program of education or training during the applicable 10-year period because of mental or physical disability (including the disabling effects of chronic alcoholism), the period of eligibility may be extended by an amount of time equal to the length of the disability. There is no other basis for extension of eligibility.

Once the 10-year ending date has been established it does not change, *even if* the permanently totally disabled veteran remarries, whether because of the death of or divorce from the previous spouse. [38 CFR § 21.3046(a)(2)(iv)] The new spouse gets the first spouse's delimiting date, unless the veteran is determined to be not permanently totally disabled for some reason but then has permanent total disability restored. In this event the spouse at the time the rating is re-established is entitled to a new delimiting date. The new spouse is entitled to whatever portion of the 45 months of entitlement may remain. There is no bar to simultaneous payment of Chapter 35 benefits and payment of compensation, pension, or DIC as a spouse or surviving spouse.

An eligible spouse or surviving spouse may also qualify for a VA education loan, if all of the following requirements are met:

- The eligible person's delimiting date for education benefits eligibility must have passed;
- There must have been unused entitlement remaining when the delimiting date passed;
- The eligible person must have been enrolled full-time when the delimiting date passed;
- The eligible person must be enrolled full-time for the period for which the loan is requested;
- The eligible person must have been denied a loan under the Guaranteed Student Loan Program;
- The eligible person must meet specified financial criteria regarding income, resources, and school-related expenses; and
- The eligible person must not have any outstanding indebtedness because of a prior VA overpayment.

The amount of the loan is based on a formula tied to income, school expenses, and the amount of remaining entitlement. The maximum loan amount may not exceed \$2,500 per academic year.

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An eligible disabled (helpless) child whose mental or physical disability precludes pursuit of an educational program may receive Special Restorative Training under Chapter 35. Under certain circumstances, this special training may be provided for more than 45 months, but not beyond the child's 31st birthday. In addition, an eligible disabled child over the age of 14 or an eligible disabled spouse or surviving spouse may receive Specialized Vocational Training, leading to a suitable vocational objective for the particular disability. When a child has been determined to be "helpless," there is no bar to concurrent payment of benefits for special training under Chapter 35 and compensation, pension, or Dependency and Indemnity Compensation, because these payments are based on the child's disability and not on school attendance after age 18.

Determinations of eligibility to education assistance under Chapter 35 are made by the VA Regional Office having jurisdiction of the veteran's claims file. However, once eligibility is established, the eligible child's or spouse's claim and education file comes under the jurisdiction of one of five centralized locations, depending on where the eligible person is attending school or being trained. These are:

- Eastern Region—VARO Buffalo, New York
- Southern Region (includes Puerto Rico and the Virgin Islands)—VARO Atlanta, Georgia
- Central Region—VARO St. Louis, Missouri
- Western Region (includes all U.S. Pacific islands except for the Philippines)—VARO Muskogee, Oklahoma
- Republic of the Philippines—VARO Manila

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SAMPLE COPY

OMB Approved No. 2900-0098
Respondent Burden: 30 Minutes

Department of Veterans Affairs					
APPLICATION FOR SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE <i>(Under Provisions of Chapter 35, Title 38, U.S. C.)</i>			1. VA FILE NUMBER (If known)		
IMPORTANT: Before completing this form, read the instructions on the attached sheet. Type or print answers in ink. If additional space is needed, use Item 29, "Remarks" or blank paper and key answers to item numbers. See the HOW TO FILE YOUR CLAIM at the end of these instructions on where to take or send your completed application form to apply for education benefits.					
PART I - GENERAL INFORMATION REGARDING APPLICANT					
2. FIRST-MIDDLE-LAST NAME OF APPLICANT ANGELA D. JOHNSON		3. SOCIAL SECURITY NUMBER 237-88-1234	4. DATE OF BIRTH 06/19/1984		
5. MAILING ADDRESS OF APPLICANT (Number and street or rural route, city or P.O., State and 9 DIGIT ZIP Code) 1190 Duchess Dr. Mtn. Ranch, CA 95200		6. RELATIONSHIP OF APPLICANT TO VETERAN <input type="checkbox"/> SPOUSE <input type="checkbox"/> SURVIVING SPOUSE <input checked="" type="checkbox"/> CHILD			
PART II - INFORMATION CONCERNING DISABLED OR DECEASED VETERAN OR INDIVIDUAL ON ACTIVE DUTY					
7. FIRST - MIDDLE - LAST NAME OF VETERAN OR INDIVIDUAL ON ACTIVE DUTY ON WHOSE ACCOUNT BENEFITS ARE CLAIMED Lewis M. Johnson		8. SOCIAL SECURITY NUMBER 237-22-0909	VA DATE STAMP (For VA Use Only)		
9. DATE OF BIRTH 07/22/1947	10. BRANCH OF SERVICE US ARMY	11. SERVICE NUMBER 53 525 609			
12. DATE OF DEATH OR DATE LISTED AS MISSING IN ACTION OR P.O.W.					
13. VA OFFICE WHERE RECORDS ARE LOCATED OAKLAND, CA					
PART III - SPECIAL INFORMATION CONCERNING APPLICANT					
14. IF YOU ARE THE SPOUSE OF A DISABLED VETERAN, IS A DIVORCE OR ANNULMENT PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO N/A		15. IF YOU ARE THE SURVIVING SPOUSE OF A VETERAN ON WHOSE ACCOUNT BENEFITS ARE CLAIMED, HAVE YOU REMARRIED SINCE HIS OR HER DEATH? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
16A. HAVE YOU EVER SERVED ON ACTIVE DUTY IN THE ARMED SERVICES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes" complete Items 16B, 16C, and 16D)		16B. BRANCH OF SERVICE	16C. ACTIVE DUTY DATES FROM TO		
16D. TYPE OF SEPARATION OR DISCHARGE		17A. ARE YOU AN EMPLOYEE OF THE FEDERAL GOVERNMENT? (If you check "Yes", complete Item 17B) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO 17B. DO YOU EXPECT TO RECEIVE FUNDS FROM YOUR AGENCY OR DEPARTMENT FOR THE SAME COURSE FOR WHICH YOU EXPECT TO RECEIVE VA EDUCATIONAL ASSISTANCE? (If you check "Yes", give additional information in Item 29, "Remarks". (You may not receive VA education benefits for a course or training that the Federal Government is paying for under the Government Employees' Training Act) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO			
PART IV - VA BENEFITS AND EDUCATION OR TRAINING PREVIOUSLY APPLIED FOR					
18. TYPE OF BENEFITS (Check applicable box(es)) SURVIVORS' AND DEPENDENTS A. <input checked="" type="checkbox"/> NONE D. <input type="checkbox"/> EDUCATIONAL ASSISTANCE (Complete Items 18H and 18I) G. <input type="checkbox"/> OTHER (Specify, below) B. <input type="checkbox"/> HOSPITALIZATION OR MEDICAL CARE E. <input type="checkbox"/> EDUCATION OR TRAINING BASED ON YOUR OWN SERVICE (Complete Items 19A and 19B) C. <input type="checkbox"/> DISABILITY COMPENSATION F. <input type="checkbox"/> DENTAL OR OUTPATIENT TREATMENT			18H. NAME OF VETERAN 18I. VETERAN'S FILE NUMBER (If known)		
19A. YOUR OWN VA FILE NUMBER		19B. VA OFFICE WHERE YOUR RECORDS ARE LOCATED (City and State)			
PART V - PREVIOUS EDUCATION AND TRAINING					
20A. TYPE OF SCHOOL	20B. NO. OF YEARS COMPLETED	20C. DATES ATTENDED		20E. NAME OR DESCRIPTION OF COURSE	20F. NAME AND LOCATION OF SCHOOL (City and State)
		20C. FROM	20D. TO		
ELEMENTARY SCHOOL	8	08/1990	6/1998	Elementary School	San Andreas Elementary San Andreas, CA
HIGH SCHOOL	4	08/1998	06/2002	High School	Calaveras High School San Andreas, CA
COLLEGE					
VOCATIONAL OR TRADE					
20G. CHECK APPROPRIATE BOX AND ENTER DATE IN ITEM 20H <input checked="" type="checkbox"/> GRADUATED FROM HIGH SCHOOL <input type="checkbox"/> EXPECT TO GRADUATE <input type="checkbox"/> DISCONTINUED HIGH SCHOOL <input type="checkbox"/> PLAN TO DISCONTINUE					20H. DATE 06/2002
21A. NAME OF APPRENTICESHIP OR OTHER ON-THE-JOB TRAINING COURSE (If any)			21B. DATES OF TRAINING FROM TO		21C. PLACE OF TRAINING
22A. HAVE YOU EVER HELD A LICENSE TO PRACTICE A PROFESSION OR "JOURNEYMAN RATING TO WORK AT A TRADE? (Examples - electrician, radio operator, teacher, lawyer, CPA, bricklayer, carpenter, etc.) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," complete Items 22B and 22C)			22B. NAME OF LICENSE OR JOURNEYMAN RATING		22C. STATE IN WHICH HELD
23A. HAVE YOU EVER BEEN EMPLOYED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO (If "Yes," complete Items 23B and 23C)			23B. PRINCIPAL OCCUPATION		23C. NUMBER OF MONTHS EMPLOYED IN THIS OCCUPATION

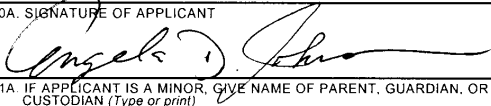
VA FORM
JUN 2003

22-5490

SUPERSEDES VA FORM 22-5490, JUL 2002,
WHICH WILL NOT BE USED.

BE SURE TO COMPLETE
REVERSE SIDE

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PART VI - VA COUNSELING			
<p>24. VA has professional career counselors who can help you plan your education and employment. A VA counselor can also help you select a school or training facility. If you are a disabled spouse or child, VA may require that you receive counseling before you enter into a specialized program of training. If you are a child under age 18, and have not completed high school, you cannot receive VA educational assistance without VA counseling. If you feel you may require VA counseling, contact your nearest VA office as soon as possible. If you are not in the local dialing area of a VA office, call 1-800-827-1 000. Call 1-800-829-4833, if you are hearing impaired. You may request counseling at any time during the period of your eligibility for educational assistance.</p>			
PART VII - EDUCATIONAL PLAN			
<p>IMPORTANT: If you have selected the program for which you would like to receive VA educational benefits, please complete Items 25A. IF YOU KNOW THE PROGRAM YOU WANT WHAT IS THE FINAL EDUCATIONAL PROFESSIONAL OR VOCATIONAL GOAL YOU PLAN TO REACH? (Highest degree or occupation) 25B. IF YOU HAVE SELECTED YOUR PROGRAM DESCRIBE THE COURSE(S) YOU WILL BE TAKING (List each diploma, and degree or vocational course)</p>			
B.A. EDUCATION		EDUCATION	
25C. NAME AND ADDRESS OF SCHOOL OR TRAINING ESTABLISHMENT <div style="text-align: center;">UNIVERSITY OF PACIFIC STOCKTON, CA</div>		25D. EXPECTED DATE OF ENROLLMENT <div style="text-align: center;">01/10/2005</div>	26E. LENGTH OF PROGRAM <div style="text-align: center;">4 YEARS</div>
		25F. EDUCATION OR TRAINING WILL BE BY: <input checked="" type="checkbox"/> SCHOOL ATTENDANCE <input type="checkbox"/> APPRENTICESHIP ON-THE-JOB OR CORRESPONDENCE (Spouse or surviving spouse only) <input type="checkbox"/> INDEPENDENT STUDY <input type="checkbox"/> FARM COOPERATIVE	
26. ESTIMATED COST OF YOUR COMPLETE PROGRAM ▶	A. TUITION \$ 2,100.00	B. BOOKS AND OTHER FEES \$ 600.00	C. TOTAL COST \$ 2,700.00
PART VIII - ELECTION (SON OR DAUGHTER ONLY)			
<p>IMPORTANT: Once you start a chapter 35 program, generally, you cannot receive payments of compensation, pension, or dependency and indemnity compensation which might otherwise be payable as a result of your school attendance. CAREFULLY READ ITEM 13 OF THE INSTRUCTIONS BEFORE COMPLETING THIS ELECTION BLOCK. WE STRONGLY ENCOURAGE EACH PERSON TO DISCUSS INFORMATION CONCERNING THIS ELECTION WITH A VA COUNSELOR.</p>			
27. I CERTIFY THAT I understand the effects of an election of Chapter 35 benefits and that I elect to receive such benefits from the following date: ▶		MONTH, DAY, YEAR	
PART IX - INFORMATION PAMPHLET			
<p>28. DID YOU RECEIVE AN INFORMATION PAMPHLET ENTITLED "SUMMARY OF EDUCATIONAL BENEFITS UNDER THE SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM" FOR CHAPTER 35 OF TITLE 38, U.S. CODE? <input type="checkbox"/> YES <input type="checkbox"/> NO (See specific instructions about Information Pamphlet)</p>			
29. REMARKS			
PART X - SIGNATURES			
<p>NOTE - If the applicant is a minor, the parent, guardian, or custodian MUST sign Item 31A.</p>			
<p>I CERTIFY THAT the information in this application is true and accurate to the best of my knowledge and belief. If I request counseling, I authorize release of school and testing records to VA for use in counseling me and supervision my program of education or training.</p>			
30A. SIGNATURE OF APPLICANT 		30B. DATE SIGNED <div style="text-align: center;">01-05-05</div>	
31A. IF APPLICANT IS A MINOR, GIVE NAME OF PARENT, GUARDIAN, OR CUSTODIAN (Type or print)		31 B. ADDRESS (Include ZIP Code)	
32A. SIGNATURE OF (Check one) <input type="checkbox"/> PARENT <input type="checkbox"/> GUARDIAN <input type="checkbox"/> CUSTODIAN		32B. TELEPHONE NUMBER (Include Area Code)	
SIGN HERE ▶			
<p>PENALTY: Willfully false statements as to a material fact in a claim for education benefits is a punishable offense and may result in the forfeiture of these or other benefits and in criminal penalties.</p>			

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— Notes —

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— Notes —

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Study Questions:

Using the assigned references and reading materials, answer the following questions:

1. An eligible surviving child under age 18 who has completed high school may be paid both DIC (or death pension) and Chapter 35 education benefits. (T/F)
2. If a child becomes eligible for Chapter 35 benefits after his or her 18th birthday and attends school, he or she will remain eligible for benefits for 8 years, but not beyond:
 - a. Age 26
 - b. Age 28
 - c. Age 31
 - d. Age 35
3. If the spouse of a permanently totally disabled veteran is attending school under Chapter 35 and is divorced from the veteran without fault on the part of the spouse, the spouse's eligibility for education benefits terminates:
 - a. The day the divorce is final.
 - b. The end of the month in which the divorce becomes final.
 - c. The end of the year.
 - d. The end of the school term.
4. If a permanently totally disabled veteran remarries, the new spouse is entitled only to the remaining portion of the previous spouse's eligibility and entitlement to education benefits under Chapter 35. (T/F)
5. Which of the following types of training may an eligible child take under Chapter 35?
 - a. High school equivalency courses
 - b. Vocational flight training
 - c. Correspondence training
 - d. Personal development courses
6. The surviving spouse of a deceased veteran may extend the 10-year period of eligibility for Chapter 35 benefits if the surviving spouse is unable to begin or complete training because of mental or physical disability. (T/F)

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7. If other requirements such as length of service are met, can an eligible child be paid Chapter 35 benefits for attending school while on active duty? (Y/N)
8. What is the oldest age that a child may first establish eligibility to benefits under Chapter 35?
 - a. 21
 - b. 23
 - c. 25
 - d. 28
9. May an eligible person under Chapter 35 train or attend school at less than full-time? (Y/N)
10. Under what circumstances may an eligible person under Chapter 35 be paid additional allowance for dependents?
 - a. So long as the eligible person attends full-time, he or she may be paid for all dependents.
 - b. An eligible spouse or surviving spouse may be paid for dependent children in custody, but an eligible child may not be paid additional allowance for dependents.
 - c. An eligible child may be paid additional allowance for a spouse, but not for the child's own children.
 - d. None of the above.